



For a thriving New England

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September 18, 2015

Peter Bent, President, Treasurer, and Director  
Browns Yacht Yard Inc.  
6 Montgomery Place  
Gloucester, MA 01930

Peter Bent, Registered Agent  
Browns Yacht Yard Inc.  
Rear 139 East Main Street  
Gloucester, MA 01930

**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

RE: Notice of Violations and Intent to File Suit under the Clean Water Act

To Whom It May Concern:

The Conservation Law Foundation (“CLF”)<sup>1</sup> hereby gives notice to the addressed persons of its intent to file suit pursuant to Section 505 of the Federal Water Pollution Control Act (“Clean Water Act,” “CWA,” or “Act”), 33 U.S.C. § 1365(a), for violations of the Act specified below. This letter constitutes notice pursuant to 40 C.F.R., Part 135 (the “Notice”) to the addressed persons of CLF’s intention to file suit in United States District Court of the District of Massachusetts, seeking appropriate equitable relief, civil penalties, and other relief, no earlier than 60 days from the postmark date of this Notice letter.

The subject of this action is three-fold. First, Browns Yacht Yard Inc. (hereinafter “Browns Yacht Yard”) is discharging stormwater directly associated with boat storage, repair and transportation (SIC Code 4493) and boat building and repair (SIC Code 3732) at 6 Montgomery Place, Gloucester, MA 01930 (the “Facility”), to the waters of the United States without a permit, in violation of Sections 301(a) and 402(p)(2)(B) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B). Second, Browns Yacht Yard has failed to obtain coverage under any Clean Water

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<sup>1</sup> CLF is a not-for-profit 501(C)(3) organization dedicated to the conservation and protection of New England’s environment. Its mission includes the conservation and protection of the many uses of the waters in and around the Charles watershed for, among other things, fishing, recreation, scenic/aesthetic and scientific purposes. CLF’s membership includes people who live in or near the Charles watershed, and use and enjoy the watershed for recreational, aesthetic, and/or scientific purposes. The interests of CLF’s members are adversely affected by the Facility’s discharges of stormwater pollution to the receiving waters without a permit and in violation of the Clean Water Act.

Act permit including the Multi-Sector General Permit<sup>2</sup> (“MSGP”) adopted by the United States Environmental Protection Agency (“EPA”) for industrial sources of polluted stormwater runoff, and failed to comply with the specific requirements of any such permit, in violation of Sections 402(p)(3)(A) and 402(p)(4)(A) of the CWA, 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1). In addition, Browns Yacht Yard has failed to obtain individual National Pollutant Discharge Elimination System (“NPDES”) permit coverage for the Facility’s process water discharges associated with its engine flushing, filter cleaning, and other boat maintenance services.

## **BACKGROUND**

Gloucester Harbor (Watershed ID MA93-18) is within the Charles watershed and flows into the Atlantic Ocean. Browns Yacht Yard discharges into Gloucester Harbor. EPA has designated Segment MA93-18 as impaired pursuant to Section 303(d) of the Act, 33 U.S.C. § 1313(d), for failure to meet minimum water quality standards.<sup>3</sup> Gloucester Harbor is impaired for combined biota/habitat bioassessments, dissolved oxygen, and pathogens, namely fecal coliform.<sup>4</sup> Stormwater and urban-related runoff have been identified as probable sources of each of these impairments in Segment MA93-18.

Stormwater is water from precipitation events that flows across the ground and pavement after rain events or after snow and ice melt.<sup>5</sup> Industrial activities, such as material handling and storage, vessel refinishing and painting, vessel and equipment fluid changes, equipment maintenance and cleaning, boat and vehicle exterior washing, industrial processing, mechanical repairs, fueling, engine flushing, or other operations that occur at industrial facilities, may be exposed to stormwater flow.<sup>6</sup> Stormwater from industrial facilities, contaminated with pollutants, is then conveyed into nearby waterbodies.<sup>7</sup>

In order to discharge stormwater lawfully, Browns Yacht Yard is required to apply for coverage under a Clean Water Act discharge permit such as the MSGP. Since at least 2010, Browns Yacht Yard has been specifically required to apply for coverage under the MSGP by filing a Notice of Intent (“NOI”) within ninety days after the initial issuance of the MSGP.<sup>8</sup> On June 16, 2015,

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<sup>2</sup> ENVIRONMENTAL PROTECTION AGENCY, MULTI-SECTOR GENERAL PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY (MSGP) [hereinafter MSGP], *available at* [http://water.epa.gov/polwaste/npdes/stormwater/upload/msgp2015\\_finalpermit.pdf](http://water.epa.gov/polwaste/npdes/stormwater/upload/msgp2015_finalpermit.pdf) (last visited September 18, 2015).

<sup>3</sup> See 33 U.S.C. § 1313(d).

<sup>4</sup> [http://ofmpub.epa.gov/waters10/attains\\_waterbody.control?p\\_au\\_id=MA93-18&p\\_list\\_id=MA93-18&p\\_cycle=2012](http://ofmpub.epa.gov/waters10/attains_waterbody.control?p_au_id=MA93-18&p_list_id=MA93-18&p_cycle=2012) (last visited September 17, 2015).

<sup>5</sup> See 40 C.F.R. § 122.26(b)(13).

<sup>6</sup> See 40 C.F.R. § 122.26(b)(14).

<sup>7</sup> See 58 Fed. Reg. 61,146, 61,154 (November 19, 1993).

<sup>8</sup> EPA’s Final National Pollutant Discharge Elimination System Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP) was first issued in 1995, reissued in 2000, 2008, and 2015.

after expiration of the prior permit, the EPA issued a new MSGP requiring all covered facilities to file an NOI for coverage under the 2015 permit.

Browns Yacht Yard has failed to obtain coverage under the MSGP or any other valid authorization at any time. Therefore, Browns Yacht Yard is operating in violation of the Clean Water Act.

### **PERSONS RESPONSIBLE FOR ALLEGED VIOLATIONS**

Browns Yacht Yard, Inc. is the person, as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), responsible for the violations alleged in this Notice. Browns Yacht Yard has operated the Facility since at least 1979 and currently advertises as the operator of the Facility.<sup>9</sup> Browns Yacht Yard and its agents and directors, including but not limited to Peter Bent, owner and operator, have operational control over the day-to-day industrial activities at this Facility. Therefore, they are responsible for managing stormwater at the Facility in compliance with the Clean Water Act.

### **LOCATION OF THE ALLEGED VIOLATION**

The violations alleged in this Notice have occurred and continue to occur at the marina and boat maintenance Facility located at 6 Montgomery Place, Gloucester, MA 01930.

### **ACTIVITIES ALLEGED TO BE VIOLATIONS**

Browns Yacht Yard has, and continues to, engage in “industrial activities,” and its operations fall under SIC Codes 4493 and 3732, within the meaning of 40 C.F.R. §§ 122.26(b)(14)(ii) & (viii).<sup>10</sup> Because the Facility has primary SIC Codes of 4493 and 3732 and discharges stormwater associated with industrial activity, Browns Yacht Yard is required to apply for, obtain coverage under, and comply with the requirements of a NPDES permit such as the MSGP. In addition, Browns Yacht Yard is required to obtain individual NPDES permit coverage for process water discharges that may result from activities such as hull pressure washing, flushing boat engines and cleaning fuel filters. Browns Yacht Yard has failed to take any of these required steps.

Activities at the Facility include, but are not limited to: boat transportation, storage, and maintenance; flushing boats engines and draining blocks or manifolds; hull pressure washing,

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*See* 60 Fed. Reg. 50,804 (Sept. 29, 1995); 65 Fed. Reg. 64,746 (Oct. 30, 2000); 73 Fed. Reg. 56,572 (Sept. 29, 2008); 80 Fed. Reg. 34,403 (June 16, 2015). *See* MSGP parts 1.1 and 1.2.

<sup>9</sup> *See* Facility website, <http://www.brownsyy.com/facilities.shtml> (last visited September 17, 2015); Website for Massachusetts Secretary of State, Corporations Division, search results for Browns Yacht Yard, Inc., <http://corp.sec.state.ma.us/CorpWeb/CorpSearch/CorpSearch.aspx> (last visited September 17, 2015).

<sup>10</sup> *See* MSGP, Appendix D: Activities Covered. Water transportation (SIC 4493) and boat and ship building and repair (SIC 3732) facilities are subject to the requirements of the MSGP for stormwater discharges.

repairing engines; cleaning and changing oil filters and fuel filters; handling, transferring, storing and disposing of materials; and shipboard processes resulting in improper discharges to storm sewers or into receiving water. Heavy machinery and other equipment is operated and stored outdoors, therefore being exposed to and corroded by the elements. Vehicles driving on and off the Facility site track pollutants off-site and into the air.

Industrial equipment, materials and vehicles at the Facility are exposed to precipitation and snowmelt. Precipitation falls on and flows over the Facility, picking up paint solids, heavy metals, total suspended solids (TSS), total dissolved solids (TDS), diesel/gas fuel, ethylene glycol (anti-freeze), acid and alkaline wastes, solvents, oil, low density waste (floatables), trash, and other pollutants associated with the Facility's operations. The polluted runoff is then conveyed off-site into waters of the United States via man-made collection systems and through the nexus of wind, water, and gravity.

## **STANDARDS AND LIMITATIONS ALLEGED TO HAVE BEEN VIOLATED**

The Clean Water Act prohibits the discharge of pollutants to the waters of the United States except in accordance with a valid NPDES permit.<sup>11</sup> Browns Yacht Yard discharges stormwater associated with its industrial activity, as defined by 40 C.F.R. § 122.26(b)(14), from its Facility into waters of the United States. Because Browns Yacht Yard has not obtained coverage for these stormwater discharges under the MSGP or an individual NPDES permit, it is illegally discharging stormwater without a permit, in violation of Sections 301(a) and 402(p)(2)(B) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).<sup>12</sup> By failing to apply for and comply with the specific requirements of the MSGP and individual NPDES permit program, Browns Yacht Yard is in violation of Sections 402(p)(3)(A) and 402(p)(4)(A) of the CWA, 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1). In addition, unpermitted discharges of process wastewater constitute violations of Section 301(a) of the CWA, 33 U.S.C. §§ 1311(a) and CLF puts Browns Yacht Yard on notice that CLF intends to pursue claims related to Browns Yacht Yard's unpermitted discharges of process water to waters of the United States.

### **a. Browns Yacht Yard is discharging stormwater to waters of the United States without a permit.**

Browns Yacht Yard is an industrial discharger with primary SIC Codes of 4493 and 3732 which means that pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p), Browns Yacht Yard is obligated to apply for coverage under the MSGP or to obtain other legal authorization. Because Browns Yacht Yard has operated and continues to operate without a permit under Section 402(p), 33 U.S.C. § 1342(p), Browns Yacht Yard is in violation of Section 301(a) of the Act.

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<sup>11</sup> 33 U.S.C. § 1311(a).

<sup>12</sup> See 33 U.S.C. § 1362(12); 40 C.F.R. § 122.2; MSGP, Appendix A: Definitions, Abbreviations, and Acronyms (defining the term "discharge of a pollutant" as, *inter alia*, "any addition of any 'pollutant' or combination of pollutants to 'waters of the United States' from any 'point source'").

In addition, during storm events, Browns Yacht Yard's "industrial activities" at its Facility have resulted in a "discharge of pollutants" within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12) and "stormwater discharge associated with industrial activity" within the meaning of 40 C.F.R. § 122.26(b)(14), from its Facility on each and every day that there has been a measurable precipitation event of above 0.1 inches.<sup>13</sup> There have been many such storm events since 2010. The Facility is generating pollutants from and through at least the following point sources: travel lifts, marine railways and ramp systems, catch basins and drains, machines and equipment left outdoors, vehicles driving on and off the Facility, and other conveyances to Gloucester Harbor and other waters of the United States.<sup>14</sup> Gloucester Harbor flows into the Atlantic Ocean, both of which are "waters of the United States," as defined in 40 C.F.R. § 122.2, and therefore, "navigable waters," as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7). The Facility is discharging this industrial stormwater without the permit required under Section 402 of the Act, 33 U.S.C. § 1342.

**b. Browns Yacht Yard is discharging process water to waters of the United States without a permit.**

Boat washwater is classified as "process wastewater" under the federal Clean Water Act and as defined in 40 C.F.R. § 122.2.<sup>15</sup> Wastewater produced by flushing engines, washing boats, and cleaning fuel filters can contain a variety of pollutants including detergents, oil, grease, and dissolved metals from antifouling paints. Ablative bottom paints, which are designed to slowly slough away from the boat hull, are particularly prone to contaminating washwater with toxic metals such as zinc, copper, and occasionally lead. In addition, solids suspended in washwater, such as paint chips and organic material, can pollute ground and surface water if handled improperly. Process wastewater can be toxic to marine life and can have severe and long-term impacts on aquatic environments. In addition, improperly managed pressure washing or engine flushing operations can result in unsightly plumes that discolor natural waterways and stain natural features with bottom paint and oils.

Discharges of process water that result from flushing engines and cleaning boat equipment are not covered under the MSGP. Discharges of process wastewater must instead be covered under

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<sup>13</sup> See 40 C.F.R. § 122.26(c)(i)(E)(6). EPA has determined that precipitation greater than 0.1 inches in a 24-hour period constitutes a measurable precipitation event for the purposes of evaluating stormwater runoff associated with industrial activity.

<sup>14</sup> These discharges constitute "point sources" as defined by 33 U.S.C. § 1362(14) and 40 C.F.R. § 122.2. CLF specifically puts Browns Yacht Yard on notice that the unpermitted stormwater discharges associated with industrial activity include discharges from the Facility areas specified in 40 C.F.R. § 122.26(b)(14). See also 40 C.F.R. § 122.2, which states that the definition of "discharge of a pollutant" "includes additions of pollutants into waters of the United States from: surface runoff which is collected or channelled by man[.]"

<sup>15</sup> "Process wastewater" is here defined as "any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product."

an individual NPDES permit. Browns Yacht Yard does not have an individual NPDES permit authorizing the discharge of pressure washwater to waters of the United States. CLF intends to pursue claims related to Browns Yacht Yard's unpermitted discharges of process water to waters of the United States, namely Gloucester Harbor.

**c. Browns Yacht Yard is violating the Clean Water Act by failing to obtain coverage and failing to comply with the requirements of the MSGP.**

Browns Yacht Yard is violating Sections 402(p)(3)(A) and 402(p)(3)(4) of the CWA, 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1), by failing to apply for, obtain coverage, and comply with the requirements of the MSGP.<sup>16</sup> The Facility has primary SIC Codes of 4493 and 3732 and must obtain coverage under the MSGP for its stormwater discharges and for stormwater discharges from any co-located industrial activities.<sup>17</sup> Browns Yacht Yard's failure to obtain coverage and comply with the permit is in violation of the MSGP and Section 402(p) of the Clean Water Act., 33 U.S.C. § 1342(p).<sup>18</sup>

**1) Browns Yacht Yard Must Develop and Implement a Stormwater Pollution Prevention Plan (SWPPP).**

As a prerequisite to applying for coverage under the MSGP, Browns Yacht Yard must develop and implement a Stormwater Pollution Prevention Plan ("SWPPP").<sup>19</sup> The SWPPP must include, but is not limited to, the following: information related to a company stormwater pollution prevention team, a site description, a summary of pollutant sources, a description of control measures, and schedules and procedures pertaining to control measures and monitoring.<sup>20</sup> Browns Yacht Yard has failed to develop and implement a SWPPP in accordance with the MSGP requirements, in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

**2) Browns Yacht Yard Must Submit to EPA a Complete Notice of Intent to be Covered under the MSGP.**

To be eligible to discharge under the MSGP, Browns Yacht Yard must submit a complete Notice of Intent ("NOI") to the EPA.<sup>21</sup> To complete the NOI, Browns Yacht Yard is required to determine whether the body of water to which the stormwater discharges is an "impaired" waterbody, and whether the Facility discharges any specific pollutants listed on the NOI to that

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<sup>16</sup> MSGP part 1.1 and 1.2.

<sup>17</sup> See MSGP part 1.1; MSGP parts 8.Q and 8.R.

<sup>18</sup> A thorough search of EPA's database indicates that Browns Yacht Yard has not filed an NOI for the Facility.

<sup>19</sup> See MSGP part 5.

<sup>20</sup> See MSGP part 5.2.

<sup>21</sup> See MSGP part 1.2.



waterbody.<sup>22</sup> Gloucester Harbor is classified as an “impaired” water.<sup>23</sup> Additionally, as part of preparing the NOI, the covered Facility must make certain verifications, such as ensuring that no harm is done to a species in violation of the Endangered Species Act.<sup>24</sup> Browns Yacht Yard has failed to prepare and file an NOI meeting all applicable requirements in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

### **3) Browns Yacht Yard Must Take Control Measures and Meet Water-Quality Effluent Limitations.**

To be eligible to discharge under the MSGP, Browns Yacht Yard must select, design, install, and implement control measures (including best management practices) to prevent polluted stormwater discharges from reaching nearby waterbodies. Browns Yacht Yard must address the selection and design considerations in the permit, meet the non-numeric effluent limitations in the permit, and meet limits contained in applicable permit effluent limitations guidelines.<sup>25</sup> These control practices must be in accordance with good engineering practices and manufacturer’s specifications.<sup>26</sup> If the control measures are not achieving their intended effect of minimizing pollutant discharges, the permittee must modify these control measures as expeditiously as practicable.<sup>27</sup> Browns Yacht Yard has failed to cover the materials and operations that may result in polluted stormwater runoff. Browns Yacht Yard has not implemented the required control measures in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

### **4) Browns Yacht Yard Must Conduct Routine Facility Inspections.**

To be eligible to discharge under the MSGP, Browns Yacht Yard must conduct routine inspections of all areas of the Facility where industrial materials or activities are exposed to precipitation, and must ensure that all stormwater control measures comply with the effluent limits contained in the MSGP.<sup>28</sup> Routine inspections must be conducted at least quarterly but in many instances monthly inspections are most appropriate.<sup>29</sup> These inspections must occur when the Facility is in operation.<sup>30</sup> The schedule of these inspections must be included in the Facility’s SWPPP and be performed by qualified personnel.<sup>31</sup> Browns Yacht Yard has failed to conduct the required routine inspections in accordance with the MSGP requirements in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

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<sup>22</sup> See MSGP part 2.2.2.

<sup>23</sup> See *supra* notes 3-10.

<sup>24</sup> See MSGP part 1.1.4.5 and 2.3.

<sup>25</sup> See MSGP part 2.1.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* See also MSGP Part 4.

<sup>28</sup> See MSGP part 3.1.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

### **5) Browns Yacht Yard Must Comply with the Required Monitoring and Sampling Procedures.**

To be eligible to discharge under the MSGP, Browns Yacht Yard must collect and analyze stormwater samples and document monitoring activities consistent with the procedures in the MSGP.<sup>32</sup> The MSGP requires five types of analytical monitoring (one or more of which may apply) including quarterly benchmark monitoring, annual effluent limitations guidelines monitoring, State or Tribal-specific monitoring, impaired waters monitoring, and other monitoring as required by the EPA.<sup>33</sup> An operator must monitor each outfall identified in the SWPPP covered by a numeric effluent limit.<sup>34</sup> Required monitoring must be performed after stormwater events that result in an actual discharge on a required schedule.<sup>35</sup> All monitoring data collected under the MSGP must be reported to EPA. Furthermore, because Gloucester Harbor is an “impaired water” under Section 303(d) of the CWA, 33 U.S.C. § 1313(d), Browns Yacht Yard must monitor for all pollutants for which Gloucester Harbor is impaired.<sup>36</sup> Browns Yacht Yard has failed to conduct the required monitoring under the MSGP and has failed to submit the required monitoring reports to EPA in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

### **6) Browns Yacht Yard Must Carry out the Required Reporting and Recordkeeping.**

Browns Yacht Yard must maintain and submit any and all required monitoring data.<sup>37</sup> Such monitoring data includes the following: an annual report to EPA which includes the Facility’s findings from the annual comprehensive site inspection and any documentation of corrective actions;<sup>38</sup> an Exceedance Report to the EPA if any of the follow-up monitoring shows any exceedances of a numeric effluent limit;<sup>39</sup> and any other required reports under the MSGP.<sup>40</sup> Browns Yacht Yard has failed to maintain the required records and failed to submit all required monitoring data under the MSGP in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

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<sup>32</sup> See MSGP part 6.

<sup>33</sup> See MSGP part 6.2.

<sup>34</sup> See MSGP part 6.1.1.

<sup>35</sup> See MSGP part 6.1.3.

<sup>36</sup> See MSGP part 6.2.4

<sup>37</sup> See MSGP part 7.

<sup>38</sup> See MSGP part 7.5.

<sup>39</sup> See MSGP part 7.6.

<sup>40</sup> See MSGP part 7.7.



## **7) Browns Yacht Yard Must Comply with the Requirements of MSGP Q and R**

Browns Yacht Yard must also comply with the sector-specific requirements contained in Subparts Q and R under Part 8 of the MSGP.<sup>41</sup> Subparts Q and R require water transportation and boat building and repair facilities to implement additional technology-based effluent limits,<sup>42</sup> meet additional SWPPP and inspection requirements,<sup>43</sup> and monitor stormwater discharges for compliance with the benchmark limitations applicable specifically to water transportation facilities.<sup>44</sup> Browns Yacht Yard has failed to comply with the requirements of Subparts Q and R of the MSGP in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

### **DATES OF VIOLATION**

Each day on which Browns Yacht Yard operates its Facility without permit coverage or discharges stormwater and/or process wastewater without a permit from the Facility is a separate and distinct violation of Sections 301(a) and 402(p)(2)(B) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).

Browns Yacht Yard has discharged stormwater without a permit in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), on every day since at least 2010 on which there has been a measurable precipitation event. Each day on which Browns Yacht Yard operates its Facility without permit coverage or discharges process water without a permit from the Facility is a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. §§ 1311(a).

Every day, since at least 2010, on which Browns Yacht Yard has failed and continues to fail to apply for, obtain coverage, and comply with the requirements of the MSGP is a violation of Section 402(p)(3)(A) and (p)(4)(A) of the CWA, 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A).

Each day on which Browns Yacht Yard operates its Facility without permit coverage or discharges process water without a permit from the Facility is a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. §§ 1311(a).

These violations are ongoing and continuous, and barring a change in the stormwater management controls at the Facility and full compliance with the permitting requirements of the Clean Water Act, these violations will continue indefinitely.

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<sup>41</sup> See MSGP, Appendix D, Table D-1, Sectors Q and R.

<sup>42</sup> See MSGP parts 8.Q.3; 8.R.3.

<sup>43</sup> See MSGP part 8.Q. 4; 8.Q.5; 8.R.4; 8.R.5

<sup>44</sup> See MSGP 8.Q.6.

**RELIEF REQUESTED**

Browns Yacht Yard is liable for the above-described violations occurring prior to the date of this letter, and for every day that these violations continue. Pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Act subjects Browns Yacht Yard to a penalty up to \$37,500 per day for each violation that occurred after January 12, 2009.<sup>45</sup> CLF will seek the full penalties allowed by law.

In addition to civil penalties, CLF will seek declaratory relief and injunctive relief to prevent further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and such other relief as permitted by law. CLF will seek an order from the Court requiring Browns Yacht Yard to correct all identified violations through direct implementation of control measures and demonstration of full regulatory compliance.

Lastly, pursuant to Section 505(d) of the Act, 33 U.S.C. § 1365(d), CLF will seek recovery of costs and fees associated with this matter.

**CONCLUSION**

During the 60-day notice period, CLF is willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of further litigation. If you wish to pursue such discussions, please have your attorney contact Caitlin Peale Sloan within the next 20 days so that negotiations may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing at the conclusion of the 60 days.

Sincerely,



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<sup>45</sup> 40 C.F.R. § 19.2



cc:

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